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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 LARRY LLOYD,

11 Plaintiff,

12 v.

13 SHAWN BUZELL, ROCHA  
14 PASCUAL, KEITH A. HALL,

15 Defendant.

CASE NO. 3:19-CV-6239-BHS-DWC

ORDER GRANTING MOTION FOR  
RECONSIDERATION AND  
DIRECTING *PRO BONO*  
COORDINATOR TO IDENTIFY *PRO*  
*BONO* COUNSEL

16 The District Court referred this 42 U.S.C. § 1983 action to United States Magistrate  
17 Judge David W. Christel. On March 23, 2021, the Court denied Plaintiff Larry Lloyd's Motion  
18 for Appointment of Counsel. *See* Dkt. 77. On April 22, 2021, Plaintiff filed a Motion for  
19 Reconsideration, requesting the Court reconsider its denial of Plaintiff's request for Court-  
20 appointed counsel. Dkt. 82. After review of the record, the Court grants Plaintiff's Motion for  
21 Reconsideration (Dkt. 82) and appoints counsel from the Western District Pro Bono Panel to  
22 represent Plaintiff in this matter.  
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1           **I.       Discussion**

2           No constitutional right to appointed counsel exists in a § 1983 action. *Storseth v.*  
3 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *see United States v. \$292,888.04 in U.S.*  
4 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is  
5 discretionary, not mandatory”). However, in “exceptional circumstances,” a district court may  
6 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28  
7 U.S.C. § 1915(d)). *Rand v. Roland*, 113F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*  
8 *grounds*, 154 F.3d 952 (9th Cir. 1998). To decide whether exceptional circumstances exist, the  
9 Court must evaluate both “the likelihood of success on the merits [and] the ability of the  
10 [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues involved.”  
11 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (*quoting Weygandt v. Look*, 718  
12 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts showing he has an insufficient grasp  
13 of his case or the legal issues involved and an inadequate ability to articulate the factual basis of  
14 his claims. *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004).

15           Here, Plaintiff contends he is unable to view discovery materials. Specifically, Plaintiff  
16 has been unable to view a CD/DVD that contains video of the alleged excessive use of force at  
17 issue in this case. *See* Dkt. 82. Defendants’ counsel has submitted evidence showing they have  
18 requested the Washington State Department of Corrections (“DOC”) allow Plaintiff access to  
19 view the discovery materials. Defendants’ counsel requested Plaintiff have access to view the  
20 evidence beginning in November of 2020. *See* Dkt. 89, Fredsti Dec., ¶¶ 3-5. Defendants renewed  
21 their request that Plaintiff be allowed to view the discovery materials in March of 2021. *See id.* at  
22 ¶¶ 7-8. On April 9, 2021, after filing a Motion for Summary Judgment, Defendants’ counsel  
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1 informed the DOC that a dispositive motion had been filed and that Plaintiff should be allowed  
2 to view the discovery materials. *Id.* at p. 31.

3 The Court understood the DOC would facilitate Plaintiff's viewing of the discovery  
4 materials after Defendants' counsel requested Plaintiff be allowed to view the discovery. *See*  
5 Dkt. 76, p. 3. However, the DOC has continued to deny Plaintiff the ability to view his discovery  
6 materials. *See* Dkt. 86; *see also* Dkt. 89, Fredsti Dec., ¶¶ 6-9 Therefore, the Court concludes  
7 exceptional circumstances exist in this case which allow the Court to assist Plaintiff in securing  
8 counsel.

9 While the Court lacks the authority to require counsel to represent indigent prisoners in a  
10 § 1983 case, *Mallard v. United States Dist. Court*, 490 U.S. 296, 298 (1989), the Court may  
11 request voluntary assistance of counsel pursuant to 28 U.S.C. §1915(e)(1). *Terrell v. Brewer*, 935  
12 F.2d 1015, 1017 (9th Cir. 1991). In this case, the Court finds the interest of justice will best be  
13 served if counsel from the Western District Pro Bono Panel is appointed to represent Plaintiff in  
14 this matter. *See Johnson v. California*, 207 F.3d 650, 656 (9th Cir. 2000) (per curiam) (stating  
15 that appointment of counsel may be justified when a proceeding will go forward "more  
16 efficiently and effectively").

## 17 II. Conclusion and Directions to Clerk

18 Plaintiff's Motion for Reconsideration (Dkt. 82) is granted. Plaintiff is appointed counsel,  
19 contingent on the identification of counsel willing to represent Plaintiff in this matter. The  
20 Western District of Washington's *pro bono* coordinator is directed to identify counsel to

1 represent Plaintiff, in accordance with the Court's General Order 16-20 ("In re: Amended Plan  
2 for the Representation of *Pro Se* Litigants in Civil Rights Actions"), Section 4.

3 The Court finds this matter shall be stayed while the *pro bono* coordinator attempts to  
4 identify counsel. Plaintiff's Motion for Extension of Time to Complete Discovery (Dkt. 80),  
5 Motion for a Continuance (Dkt. 81), and Motion to Continue (Dkt. 86) are denied without  
6 prejudice. Once it has been determined that the Court will be able to appoint an attorney to  
7 represent Plaintiff, the Court will issue any additional appropriate orders.

8 The Clerk is directed to stay this case. The Clerk is further directed to terminate the  
9 noting date on Defendants' Motion for Summary Judgment (Dkt. 78). When the stay is lifted, the  
10 Court will re-note the pending Motion for Summary Judgment and Plaintiff may move for an  
11 extension of time.

12 Dated this 13th day of May, 2021.

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15 David W. Christel  
16 United States Magistrate Judge  
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